THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Misc. Writ Petition (M/S) No. 1351 of 2006.

Vikram Shamsher S/O Late Shri Yadav Shamsher, R/O Shamsher Niwas, Markham Grant, P.O. Doiwala, Dehradun.

… Petitioner.

Vs.

1. I Additional Civil Judge (Sr. Division) Dehradun.
2. Civil Judge, Junior Division, Dehradun.
3. Neeta Rana W/O Shri Raghav Shamsher, R/O Prayag Apartment, 7th Floor, Pandey Lekhaut, Khemla, Nagpur.
4. Shri Raghav Shamsher S/O Late Shri Krishan Shamsher, R/O Prayag Apartment, 7th Floor, Pandey Lekhaut, Khemla, Nagpur.

….Respondents.

Sri Arvind Vashist, learned counsel for the petitioner.
Sri R.C. Arya, Learned Counsel for the State-respondents 1 & 2.

Date September 13, 2006

P.C.: Hon'ble B.S. Verma, J.
(Stay Application No. 11714 of 2006)

Heard learned counsel for both the parties and perused the record.

By means of this writ petition, the petitioner has sought a writ, order or direction in the nature of certiorari quashing the orders dated 10-2-2006 passed by the learned Civil Judge (Junior Division) Dehradun in Original Suit No. 597 of 2000 and dated 6-9-2006 passed by the I Additional Civil Judge (Senior Division) Dehradun in O.S. No. 597 of 2000 Vikram Shamsher Vs. Neeta Rana. The order dated 10-2-2006 has been passed on the review application moved by the defendant-respondents for review of order dated 4-2-2006 against the finding of Issue No.8 and the learned trial court recalled the order dated 4-2-2006 and decided Issue No. 8 against the plaintiff-petitioner. By the order dated 6-9-2006, the Additional Civil Judge (Senior Division) Dehradun the learned Judge has rejected the application no. 191-C moved by the plaintiff-petitioner, wherein the petitioner had

challenged the pecuniary jurisdiction of the trial Judge in passing the said order.

Issue No. 8 was framed by the Civil Judge (Junior Division) in the suit to the effect whether this Court has jurisdiction to entertain the counter-claim.

Learned counsel for the plaintiff-petitioner has submitted that a prayer was made by way of counter-claim that the plaintiff may be evicted, while the land is agricultural land and there is no dispute that the land is agricultural.

The plaintiff-petitioner has filed a suit for permanent injunction against the defendant-respondents against which the counter-claim has been lodged.

Order 8, Rule 6-A sub-rule (2) of the Civil Procedure Code provides as under:-

"(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim."

Earlier Issue No. 8 was decided against the defendants by the Civil Judge (Junior Division) and on the review application, the said order dated 4-2-2006 has been recalled and the Issue No. 8 has been decided against the petitioner.

In view of the Proviso to Section 115 of the C.P.C., as has been amended in 2002, revision is maintainable against the impugned orders.

In view of the said provision, the petitioner is directed to avail the remedy of revision before the Appropriate Court.

In the last, the learned counsel for the petitioner-plaintiff submitted that the case is fixed for final arguments on 14-9-2006 before the trial court. It is provided that if the petitioner seeks adjourment to file the revision, the Trial Court shall consider the prayer of the petitioner for adjourment.

With the above observations, the writ petition is dismissed in-limine.

(B.S. Verma, J.)

RCP